

FILED

IN THE UNITED STATES DISTRICT COURT OCT 12 2005
FOR THE Western DISTRICT OF TEXAS
Waco Division

U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY CLERK

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV - 4 2005

PETITION FOR A WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

DAVID J. MALAND, CLERK
BY
DEPUTY

Richard M. King Jr.
PETITIONER
(Full name of Petitioner)

Alfred Hughes Unit, Gatesville, Texas
CURRENT PLACE OF CONFINEMENT

VS.

#810257

PRISONER ID NUMBER

Director of T.D.C.J.-C.I.D.
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of petitioner)

W05 01366 4:05w 427

CASE NUMBER
(Supplied by the Clerk of the District Court)

Judge Schell

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum.
3. When the Clerk of Court receives the \$5.00 filing fee, the Clerk will file your petition if it is in proper order.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-ID, you must send in a certified *In Forma Pauperis* Data Sheet from the institution in which you are confined. If you are in an institution other than TDCJ-ID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. If you want to challenge judgments entered by different courts, either in the same state or in different states, you must file separate petitions as to each court.
6. Include all your grounds for relief and all the facts that support each ground for relief in this petition.
7. When you have finished filling out the petition, mail the original and two copies to the Clerk of the United States District Court for the federal district within which the State court was held which convicted and sentenced you, or to the federal district in which you are in custody. A "VENUE LIST," which lists U.S. District Courts in Texas, their divisions, and the addresses for the clerk's office for each division, is posted in your unit law library. You may use this list to decide where to mail your petition.
8. Petitions that do not meet these instructions may be returned to you.

PETITION

What are you challenging? (Check only one)

- ☒ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-23)
probation or deferred-adjudication probation
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14, & 20-23)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-23)

All petitioners must answer questions 1-4:

1. Name and location of the court (district and county) which entered the conviction and sentence that you are presently serving or that is under attack:
6th District Court, Lamar County, Texas
2. Date of judgment of conviction: October 30, 1997
3. Length of sentence: 50 years incarceration
4. Nature of offense and docket number (if known): Aggravated Sexual Assault of a Child,
Cause No. 16606

Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:

5. What was your plea? (Check one)

☒ Not Guilty ☐ Guilty ☐ Nolo contendere

6. Kind of trial: (Check one) ☒ Jury ☐ Judge Only

7. Did you testify at the trial? ☐ Yes ☒ No
8. Did you appeal the judgment of conviction? ☒ Yes ☐ No
9. If you did appeal, in what appellate court did you file your direct appeal?

Sixth Judicial Court of Appeals (TX) Cause Number (if known) 06-98-00014-CR

What was the result of your direct appeal (affirmed, modified or reversed): Affirmed

What was the date of that decision? October 22, 1998

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Result: _____

Date of result: _____ Cause Number (if known): _____

If you filed a petition for writ of certiorari with the United States Supreme Court, answer the following:

Result: Petition denied

Date of result: _____

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state application for writ of habeas corpus that you may have filed.

☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: Court of Criminal Appeals; U.S. Dist. Court East Dist. of Texas (Texarkana)

Nature of proceeding: Applications for writ of habeas corpus

Cause number (if known): State: Writ No. 38 996-04; Cause No. 5:02-CV-00172

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court.

Grounds raised: State: Jury bias, Unqualified state judge; Federal: Jury bias (4 grants), illegal search and seizure, tainted evidence (8 grants), ineffective assistance of counsel, denial of fair trial (3 grants)

Date of final decision: State: October 5, 2005 Federal: March 12, 2004

Name of court that issued the final decision: Court of Criminal Appeals of Texas; U.S. Dist. Court, East. Dist. of Texas (Texarkana Div.)

As to any second petition, application or motion, give the same information:

Name of court: Information above is "second" application in state court

Nature of proceeding: see above

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court.

Grounds raised: _____

Date of final decision: _____

Name of court that issued the final decision: _____

If you have filed more than two petitions, applications, or motions, please attach an additional sheet of paper and give the same information about each petition, application, or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition?

☐ Yes ☒ No

(a) If your answer is "yes," give the name and location of the court that imposed the sentence to be served in the future:

(b) Give the date and length of the sentence to be served in the future: _____

(c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future?

☐ Yes ☐ No

- A. GROUND ONE: Petitioner was tried by unqualified state district in violation of State and Federal Constitutions.

Supporting FACTS (tell your story briefly without citing cases or law):

Judge Webb Biard retired in December, 1996, after losing reelection to state court judges position for the 6th District Court of Texas. Petitioner was not tried until October, 1997, ten months after Judge Biard's retirement. Judge Biard did not renew constitutionally required state judge's oaths until July, 1999

- B. GROUND TWO: _____

Supporting FACTS (tell your story briefly without citing cases or law):

- C. GROUND THREE: _____

Supporting FACTS (tell your story briefly without citing cases or law):

D. GROUND FOUR: _____

Supporting FACTS (tell your story briefly without citing cases or law):

21. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation, or disciplinary proceeding that you are attacking in this petition?



Yes



No

If your answer is "yes," give the date on which each petition was filed, the federal court in which it was filed, and whether the petition was (a) dismissed without prejudice or (b) denied.

August 6, 2002; U.S. Dist. Court, East Dist. Tex. (Texarkana); Dismissed with
Prejudice on March 12, 2004.

22. Are any of the grounds listed in paragraph 20 above presented for the first time in this petition?



Yes



No

If your answer is "yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

23. Do you have any habeas corpus proceedings or appeals now pending in any court, either state or federal, relating to the judgment or proceeding under attack?



Yes



No

If "yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

F.R.C.P. Rule 60, motion for relief from final judgement; U.S. Dist. Court, East.
Dist. of Texas (Texarkana); August 12, 2005

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on October 7, 2005 (month, date, year).

Executed on October 7, 2005 (date).

Richard M. King Jr.
Signature of Petitioner (required)

Petitioner's current address: Alfred Heales Unit, Rt. 2 Box 4400, Gatesville, Texas 76597



OFFICE OF COURT ADMINISTRATION

CARL REYNOLDS
Administrative Director

August 15, 2005

Richard M. King, Jr.
#810257
Hughes Unit, Route 2, Box 4400
Gatesville, Texas 76597

Dear Mr. King:

The Office of Court Administration has received your request for records "concerning his retirement" and copies of judicial oaths taken by Judge A. Webb Biard in 1997. This agency does not maintain any records for any individual judge, and therefore is not the custodian of any records you are seeking.

As to your first request, we do not know what you mean by records concerning retirement. Therefore, we cannot refer your request to the appropriate entity.

Our records confirm your statement that Judge Biard left office at the end of 1996. Beginning in 1997, he was on the list of judges eligible to serve on assignment. He remained on the list through 2001, and has not been on the list of judges eligible to serve on assignment since that time.

Records of oaths of office for judges eligible to serve on assignment are maintained by the presiding judges of the nine administrative judicial regions. Judge Biard was assigned through the First Administrative Judicial Region; the presiding judge is the Honorable John Ovard. While we cannot give you legal advice, it is possible the documents you are seeking do not exist.

Before 1999, many assigned judges did not execute a new anti-bribery statement or oath of office upon electing to serve on assignment. An appellate case decided in 1999 held that assigned judges were required to take new oaths upon assuming their duties as assigned judges. After that, most assigned judges did make the anti-bribery statement and file it with the Secretary of State, and took the oath of office and filed it with the assigning presiding judge.

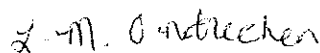
Based on your request and the foregoing information, the custodian of records for the oaths of office of Judge Biard is Judge Ovard. You may contact him at 133 N. Industrial

Richard M. King, Jr.
August 15, 2005
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Blvd., Auxiliary Court 9, 5th Floor, Dallas, Texas 75207. By copy of this letter and your letter, we are referring your request to him (*see*, Rule 12.6(f) of the Rules of Judicial Administration).

Finally, please be aware that this response is sent to you as a courtesy. Under Rule 12.4(a)(4), no response is required when the requestor is an individual who is "imprisoned or confined in a correctional facility."

Sincerely,



Lesley Martin Ondrechen
Paralegal

:lmo

cc: The Honorable John Ovard

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, WEBB BIARD, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of State Judge of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

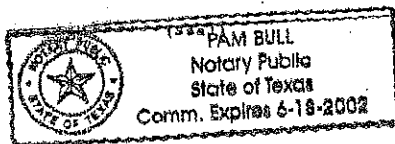
Pam Bull

SWORN TO and Subscribed before me by Webb Biard on this 23rd day of July, 19 99.

Pam Bull
Signature of Person Administering Oath

Pam Bull
Printed Name

Notary Public, State of Texas
Title



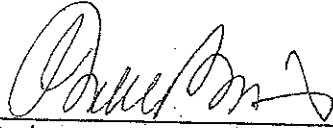
See Reverse Side
for Instructions

AFFIDAVIT TO SERVE ON JUDICIAL ASSIGNMENT

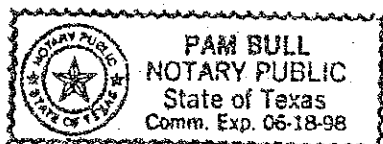
I, Webb Biard, desire my name to be on the list of the Presiding Judge of the First Administrative Judicial Region of retired and former judges subject to assignment pursuant to Section 74.054-74.056, Texas Government Code.


For that purpose, and to comply with the provisions of Sec. 74.055 (cX4), I swear (or affirm) that I meet the following requirements of Section 74.055, Texas Government Code:

- (1) I have served as a judge for at least 48 months in a district, statutory county or appellate court to wit: 4 years of service on the Sixth District Lamar County Court.
- (2) I have developed substantial experience in the following area(s) of specialty: X Criminal, X Civil and/or X Domestic Relations.
- (3) I have not been removed from office.
- (4) I did not resign from office after having received notice that formal proceedings by the State Commission of Judicial Conduct had been instituted as provided in Section 33.022 of the Texas Government Code and before the final disposition of the proceedings.
- (5) I understand that I must annually demonstrate that I have completed in the preceding calendar year the educational requirements for active district and statutory county court judges, to wit: at least 16 hours of instruction in substantive, procedural and evidentiary laws and court administration, as provided by the Rules of Judicial Education of the Supreme Court of Texas.
- (6) I certify my willingness not to appear or plead as an attorney in any court in this state for the period of time ending December 1998.
- (7) I understand that unless I file a revocation as provided by Section 75.0551, Texas Government Code, my certification under (6) above is renewed for subsequent two-year periods by operation of law.


(signature of affiant)

~~1997~~ SWORN TO and subscribed to before me this 2nd day of Jan. 1997.




Notary Public in and for the State of Texas.

My Commission Expires 6-18-98

JAN 10 1997 FAX 512 453 1548

UPC Ct. Administration →→→ AJR 1

002

APPLICATION TO CONTINUE ELIGIBILITY FOR JUDICIAL ASSIGNMENT

I, WEBB BIAED, desire my name to be continued on the list of the Presiding Judge of the 137 Administrative Judicial Region of senior, retired, and former judges subject to assignment pursuant to Sections 74.054 - 74.056, Texas Government Code.

For that purpose, and to comply with the provisions of Sec. 74.055(c)(4), I certify that I have met the following requirements of Section 74.055, Texas Government Code:

- (1) I have maintained expertise in the following area(s) of specialty:
 One or more as required by § 74.055, Gov. Code: ☒ criminal
☒ civil
☒ domestic relations
 Other areas of specialty: ☒ juvenile
☐ probate
- (2) I have completed in the preceding calendar year at least 16 hours of instruction in substantive, procedural and evidentiary law and court administration, as provided by the Rules of Judicial Education, or received a waiver of those requirements from the Court of Criminal Appeals: ☒ Yes ☐ No
- (3) I have completed the required instruction in family violence (§ 22.110, Government Code): ☒ Yes ☐ No
- (4) No formal proceedings by the State Commission on Judicial Conduct have been instituted against me during the preceding twelve months. (Section 33.022, Government Code)
- (5) My health and general abilities permit me to continue to serve.

Prue Bria
 (signature)

Date: 1/2/97

Current Address:

P.O. Box 623

PARIS, TEXAS 75460

Telephone(s): 903/737-8850